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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,449	12/30/2003	Richard D. Keeven	1671-0281	2371
28078	7590	07/14/2005	EXAMINER	
MAGINOT, MOORE & BECK BANK ONE CENTER/TOWER 1111 MONUMENT CIRCLE INDIANAPOLIS, IN 46204			REIMERS, ANNETTE R	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,449

Applicant(s)

KEEVEN ET AL.

Examiner

Annette R. Reimers

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/27/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

The drawings are objected to because Figures 4, 9, and 10 contain extraneous matter, e.g. med/lg lcs completion femoral position and space blocker, which is not permitted and should be removed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to comply with 37 CFR 1.84(p)(5), which states: "Reference characters not mentioned in the description shall not appear in the drawings. Reference characters mentioned in the description must appear in the drawings." Reference letters T and A are not mentioned in the detailed description. Correction is required. In addition, there appears to be a typographical error on page 10, line 18, of the specification, the space blocker is designated as reference number 88 instead of reference number, 80.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-10 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritter et al. (U.S. Patent Number 5,464,406).

Ritter et al. disclose a system for establishing a prosthetic gap between first and second bones at a joint comprising an instrument, 30, for positioning within the gap between the first and second bones, the instrument having a first surface facing the first bone and a second surface facing the second bone and defining a bore, 36, between the first and second surfaces and an augment, 96, for filling the gap when coupled to the instrument, the augment is configured to include at least one pin, e.g. at 98, within the bore with the augment in contact with either the first or second surface (see figures 2 and 8). The bore includes a resilient member, 40, to engage a pin when the pin extends through the bore and for removably coupling the augment to the instrument. The bore also defines internal grooves, 32, adjacent to the first and second surface (see figure 2). The instrument is a femoral positioner that includes a surface alignment plate, 126, with a bore, and a connector plate, 122 (see figure 13). The instrument is a space blocker, 108, with a bore, having a spacer body and a handle (see figure 2). The augment includes a mating surface for contacting the instrument when the pin is within

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the bore, and an opposite surface for contacting the first or second bones when the mating surface contacts the instrument, and the opposite surface defines a contour substantially similar to the first or second bones (see figures 8-10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter et al. (U.S. Patent Number 5,464,406) in view of Fraser et al. (U.S. Patent Publication Number 2002/0116009). Ritter et al. discloses the claimed invention except the resilient member being an o-ring. Fraser et al. disclose an instrument containing an o-ring as a resilient member. Fraser et al. further shows that the resilient member can be a threaded region or an o-ring, and he teaches that these are functionally equivalent structures (see page 5, column 1, paragraph 0062, lines 9-15). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Ritter et al. with the resilient member being an o-ring, in view of Fraser et al., as such would merely constitute a substitution of functionally equivalent structures.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR

AK


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